

On an appeal from a preliminary order, the Appeals Board has jurisdiction to review a finding that claimant failed to give timely notice. K.S.A. 44-534a. This jurisdiction

includes authority to determine whether claimant has established just cause for failure to give notice within ten (10) days.

Based upon the present record and for purposes of preliminary hearing, the Appeals Board finds that the claimant failed to give notice within ten (10) days. The record does not establish just cause for claimant's failure to give notice within ten (10) days. Accordingly, the claim is barred. K.S.A. 44-520.

Claimant testified that he worked for respondent as an over-the-road truck driver most recently from July 17, 1993 through December 31, 1993. When he left on December 31, 1993, he intended to return to work. His truck was in the shop and his daughter was getting married so he took some time off. On or about January 7, 1994, he sent a letter to his employer informing them that because of health problems he was going to be needing more time off than he had anticipated when he left on December 31, 1993. Respondent denies it received the letter. Whether or not respondent received it is immaterial to the issue of notice because it did not specify his health problems nor did it relate those problems to his employment. A letter dated February 14, 1994, was sent by claimant's counsel to respondent. This was the first notice of a claim for accidental injury given to respondent.

According to claimant's testimony, he had had problems with numbness in his hands as early as 1993 and also a back injury which caused him to be off work until about June 1, 1993. During the time he was off work because of his back, his hands returned to normal. After he went back to work for Advance Express in July 1993, the numbness in his hands reoccurred in about five to six (5-6) weeks. He had also had problems with an ulcer on his leg which had likewise healed while off work for the back injury. This condition likewise reoccurred following his return to truck driving for Advance Express.

Claimant did not seek medical treatment for these conditions until after he left work with Advance Express. On January 6, 1994, he saw Dr. Baughman who referred him to Dr. Miller for the problems with his leg. Dr. Baughman advised him that he would probably need surgery for the numbness in his hands and scheduled a nerve conduction test for January 13, 1994. This confirmed a need for surgery on both wrists and both elbows.

It is clear from the testimony that claimant was aware that both the conditions in his upper extremities and the ulcer problem on his leg were aggravated by his work. In addition, Dr. Miller, on January 6, advised claimant that the ulcer problem on his leg was work related and recommended a job change. Nevertheless, claimant initially submitted the medical bills from Dr. Baughman and Dr. Miller to his wife's health care insurance. In the middle of February he received notice from the health care insurance company that they would not cover the medical expenses because they were work related. At that point in time, he directed his attorney to send a demand letter to his employer asking for payment under workers compensation.

K.S.A. 44-520 provides that a claim is barred where notice is not given within ten (10) days unless the employer had actual knowledge of the accident or unless the claim establishes just cause for his failure to give such notice and notice is given within seventy-five (75) days. There is no evidence here that the employer had actual knowledge of an accident. Claimant did not complain of a work-related injury during the time he was employed by respondent. The Appeals Board finds under the facts and circumstances of

this case that claimant has not shown just cause for not giving notice within ten (10) days of his accident even assuming the date of accident to be his last date worked.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the September 20, 1994 Order entered by Administrative Law Judge Thomas F. Richardson should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of January, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert Anderson, Ellinwood, KS
Richard A. Boeckman, Great Bend, KS
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director